

## **Assembly Bill No. 2284**

### **CHAPTER 236**

An act to amend Sections 35783, 35783.1, 36991, 36992, 62521, 62583, and 62584 of, and to repeal Sections 36993 and 36994 of, the Food and Agricultural Code, relating to milk, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 1, 2008. Filed with  
Secretary of State August 1, 2008.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2284, Galgiani. Market milk standards: frozen yogurt: Milk Producers Security Trust Fund.

Existing law requires market milk dairies to provide sufficient refrigeration capacity to reduce the temperature of milk to certain temperatures within certain timeframes and to maintain the milk at a certain temperature until delivery. Existing law requires raw market milk in bulk milk tankers to be maintained in transit at a temperature not exceeding 52 °F.

This bill would delete those requirements and instead provide that market milk shall be cooled to 50 °F or less within 4 hours of the commencement of the first milking and to 45 °F or less within 2 hours of the completion of milking.

Existing law provides that any violation of these provisions is a misdemeanor.

Because this bill would change the terms of a crime, the bill would impose a state-mandated local program.

Existing law provides standards for frozen yogurt and frozen yogurt mix and labeling requirements for frozen yogurt.

This bill would repeal certain of those standards relating to fruit and acidity in frozen yogurt, and other standards relating to frozen yogurt mix. The bill would also repeal certain labeling requirements for frozen yogurt.

Existing law confers upon the Secretary of Food and Agriculture the ability to establish and administer the Milk Producers Security Trust Fund to protect producers against loss of payment for bulk milk. Existing law requires the secretary to require a handler to provide acceptable security, as defined, under certain circumstances.

Existing law provides that letters of credit and any other instrument used as acceptable security are subject to certain specified requirements and that acceptable securities shall not be released by the secretary unless the handler's average monthly purchases fall below \$30,000,000.

This bill would provide that any instrument used as acceptable security is subject to a revised set of requirements. The bill also would revise the circumstances under which the secretary may release the issuer of acceptable

security from liability secured by that security, and would grant a handler the right to replace an acceptable security with a new one, as provided.

Existing law provides that if, on the date of the notice of ineligibility for coverage from the fund, a producer has a contract with the handler which is on file with the secretary, shipments by that producer after 45 days from the date of the notice will not be considered in determining any claim the producer may make against the fund, except as provided.

This bill would instead provide that if, on the date of the notice of ineligibility, a producer has a contract with the handler which is on file with the secretary, and that producer has received payment from a handler whose milk purchases have been declared ineligible, shipments by that producer which occur more than 5 days from the date of the notice of ineligibility issued by the secretary will not be considered in determining any claim the producer may make against the fund, except as provided.

This bill would also make clarifying and technical, nonsubstantive changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 35783 of the Food and Agricultural Code is amended to read:

35783. Market milk shall be cooled as indicated by a recording thermometer to 50 degrees Fahrenheit (10 degrees Celsius) or less within four hours of the commencement of the first milking and to 45 degrees Fahrenheit (7 degrees Celsius) or less within two hours of the completion of milking. The blend temperature after the first milking and subsequent milkings, or milk in transit on bulk milk tankers, shall not exceed 50 degrees Fahrenheit (10 degrees Celsius). The secretary may promulgate regulations to provide for temporary deviations from the requirements of this section that may occur as a result of emergencies arising from equipment failure, or as a result of other unusual circumstances; provided, however, that the quality and safety of the product are not adversely affected.

SEC. 2. Section 35783.1 of the Food and Agricultural Code is amended to read:

35783.1. A recording thermometer shall be installed in each dairy farm milk storage tank used to cool or store market milk during the milking process. If a farm pickup tanker is used in lieu of a dairy farm tank, then the recording thermometer shall be installed in the pipeline following an effective cooling device that cools the milk to 45 degrees Fahrenheit (7

degrees Celsius) or less. Nothing in this section shall be construed as meaning that a recording thermometer must be attached when milk tankers are moved over the road. The director shall issue regulations providing standards for such thermometer including installation and operation.

SEC. 3. Section 36991 of the Food and Agricultural Code is amended to read:

36991. Frozen yogurt is a frozen dairy product. It shall be made from milk, with or without added milk solids, flavoring, or seasoning, which has been pasteurized and afterwards fermented by one or more strains of *Lactobacillus bulgaricus*, including yogurt strains, *Streptococcus thermophilus* and *Lactobacillus acidophilus*. It shall not be pasteurized following fermentation. It shall contain not more than 10 coliform bacteria per gram, contain not more than 10 colonies per gram each of molds, yeasts, and other fungi, and be free of any other objectionable bacteria that may impair the quality of the product.

SEC. 4. Section 36992 of the Food and Agricultural Code is amended to read:

36992. Frozen yogurt shall contain not less than 3.5 percent milkfat.

SEC. 5. Section 36993 of the Food and Agricultural Code is repealed.

SEC. 6. Section 36994 of the Food and Agricultural Code is repealed.

SEC. 7. Section 62521 of the Food and Agricultural Code is amended to read:

62521. For purposes of this chapter, the following terms mean:

(a) (1) “Acceptable security” means a surety bond from an admitted insurer, deposits of government securities, a letter of credit, or other form of performance guarantee acceptable to the secretary and meeting the requirements as acceptable security pursuant to law. Any instrument used as acceptable security shall contain provisions the secretary may prescribe, shall have an effective life of no less than two years, shall name the secretary as the beneficiary of the instrument, shall be clean and irrevocable if the security is a letter of credit, shall provide that the secretary may draw upon it up to the total amount in the event of the handler’s payment default, and, except as otherwise provided in paragraph (3), shall be verified to the secretary as being in effect and complying with the provisions of this chapter at the end of every six-month interval following the date on which a handler originally posts the instrument. Except as provided in paragraphs (2) and (3), acceptable securities provided to the secretary shall not be released by the secretary unless the handler’s average monthly purchases, as determined annually by the secretary, fall below thirty million dollars (\$30,000,000), or the fund cash, whichever is higher. Any interest accrued by the instrument shall be the property, and for the benefit, of the handler posting the instrument.

(2) Subject to the provisions of this chapter, a handler who has posted an acceptable security shall have the right to replace that instrument with a new acceptable security meeting the requirements of this chapter at the end of every six-month interval following the date on which the handler originally posted the instrument. The secretary shall release the issuer of

any acceptable security from all past, present, or future obligations secured by the acceptable security upon the secretary's acceptance of replacement security meeting the requirements of this chapter and the secretary shall then provide written confirmation to the issuer of the original acceptable security that an acceptable replacement security had been provided.

(3) Upon receipt of an affidavit confirming that the amount paid under an acceptable security posted pursuant to this chapter was equal to the total amount of that instrument, the secretary shall release the issuer of that acceptable security from all past, present, and future liability. Upon receipt of an affidavit confirming any other amount paid by an issuer under an acceptable security posted pursuant to this chapter, the secretary shall release the issuer of that security to the extent of the issuer's payment.

(b) "Board" means the Milk Producers Security Trust Fund Board.

(c) "Covered milk" means milk that would, in the event of a default in payment by the purchasing handler, qualify for coverage under Article 5 (commencing with Section 62580) of Chapter 2.5 of Part 3.

(d) "Fund" means the Milk Producers Security Trust Fund created pursuant to Section 62506.

(e) "Fund cash" means the combined value of the security charges collected pursuant to Section 62561 and any increments received pursuant to Section 62573.

(f) (1) Except as provided in paragraph (2), "fund surplus" means the portion of fund cash at any particular time that consists of increments received by the fund pursuant to Section 62573.

(2) If payment of producer claims pursuant to Article 7 (commencing with Section 62620) reduces the fund cash to thirty million dollars (\$30,000,000), "fund surplus" shall thereafter mean the amount by which the fund cash exceeds thirty million dollars (\$30,000,000).

(g) "Handler" means any person who as owner, agent, broker, or intermediary, either directly or indirectly, receives, purchases, or otherwise acquires ownership, possession, or control of milk in unprocessed or bulk form from a producer or a producer-handler for the purpose of manufacturing, processing, selling, or other handling. It includes cooperative associations that, either directly or indirectly, receive, purchase, or otherwise acquire ownership, possession, or control of milk from other handlers or producers who are nonmembers of the cooperative.

(h) "Milk" means bulk whole milk, bulk reduced-fat milk, bulk lowfat milk, bulk skim milk, bulk condensed skim, and bulk cream, and any other combination of these products which have not had nondairy ingredients added. It does not include milk which has been packaged in bottles, cartons, dispenser cans, or other consumer packages.

(i) "Producer" means any person that produces milk from five or more cows whose bulk milk is received, acquired, or handled by a handler. It includes the nonprofit cooperative associations described in Article 3 (commencing with Section 61871) of Chapter 2 in the sale of milk of its member producers to other handlers.

SEC. 8. Section 62583 of the Food and Agricultural Code is amended to read:

62583. If, on the date of the notice issued pursuant to Section 62582, a producer has a contract with the handler which is on file with the secretary, and that producer has received payment from a handler whose milk purchases have been declared ineligible, shipments by that producer which occur more than five days from the date of the notice of ineligibility issued by the secretary will not be considered in determining any claim the producer may make against the fund, unless the secretary reestablishes eligibility for future shipments to be covered by the fund.

SEC. 9. Section 62584 of the Food and Agricultural Code is amended to read:

62584. If, on the date of the notice issued pursuant to Section 62582, a producer does not have a contract with the handler which is on file with the secretary, shipments by that producer which occur more than five days from the date of the notice of ineligibility issued by the secretary will not be considered in determining any claim the producer may make against the fund, unless the secretary reestablishes eligibility for future shipments to be covered by the fund.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify milk temperature requirements consistent with federal law, prevent wasteful expenditures by dairy processors in the processing of milk, clarify coverage terms of the Milk Producers Security Trust Fund, and be consistent with federal law with regards to frozen dairy products, it is necessary that this act take effect immediately.